THE

MADRAS LAW JOURNAL.

I] FEBRUARY. [1946

SUMMARY OF ENGLISH CASES.

FISHER *v* RUISLIP-NORTHWOOD URBAN DISTRICT COUNCIL, (1945) 1 K.B 584 (C.A) : (1945) 2 All E R 458

Tort—Local authority erecting air raid shelter on highway under statutory powers—Obstruction—Duty to prevent danger to the public using the highway—Limits.

The plaintiff's car came into collision in the dark with a surface air raid shelter standing in the roadway as the lights were not in operation. In an action for damages against the local authority for personal injuries suffered and loss of earnings,

Held, the local authority owed a duty towards the plaintiff, as a member of the public lawfully using the highway to take reasonable steps to warn him of the danger of the obstruction Where the Legislature authorises the construction and maintenance of a work which will be safe or dangerous to the public according as reasonable care is or is not taken in its construction or maintenance as the case may be, the fact that the duty to take such care is expressly imposed by the statute cannot be relied on as showing that no duty exists. The duty of the local authority, is not a duty to light (unless that be in the circumstances the only possible effective precaution) but a duty to take reasonable steps to prevent the obstruction becoming a danger to the public both at night and during the day Authorities discussed and (1940) 2 K B 561, (1941) 1 K B 134 and (1941) 2 K B. 120, not followed.

The Common law duty owed to other users to take reasonable care in the use of the highway attaches, unless that duty is expressly or impliedly negatived by some statute.

INLAND REVENUE COMMISSIONERS *v* THE NATIONAL ANTI-VIVISECTION SOCIETY, (1945) 2 All E R 529 (K B D)

Income-tax Act (1918)—*Sections* 37 *and* 40—*Anti-vivisection Society—If one established for charitable purposes only—Burden of proof—Exemption of income from income-tax—Test*

The National Anti-vivisection Society claimed exemption from income-tax in respect of income from its investments on the ground that it was "a body of persons established for charitable purposes only."

Held, it was for the society to prove affirmatively that it was a society "established for charitable purposes only." But as on the evidence it was found that the main object of the society was the total obliteration of vivisection, the attainment of that object far from being beneficial would be gravely injurious to the community. Accordingly the society's claim for exemption must be rejected.

R *v* JOYCE, (1945) 2 All.E.R. 673 (C C A.).

Crimes—High treason—Alien obtaining British passport by declaring himself a British subject by birth—Treason by joining the enemies beyond the realm—Jurisdiction of English Courts.

D.

J, was born in the United States of America in 1906, the son of a naturalised American citizen, and thereby became himself a natural born American citizen. When about three years of age *J* was brought to Ireland where he stayed until about 1921 when he came to England. He stayed in England until 1939, being then thirty three years of age He was brought up, educated and settled within the King's Dominions. On July 4, 1933, he made an application for a British passport describing himself as a British subject by birth, having been born in Galway, the passport being asked for the purpose of holiday touring in Belgium, France, Germany, Switzerland, Italy and Austria. He was granted the passport, as such British subject by birth for a period of five years On September 24, 1938, and again on August 24, 1939, *J* applied for a renewal of that passport for a further period of one year, again describing himself as a British subject by birth who had not lost that national status The applications were granted and the passport renewed to expire on July 1st, 1940 It was found that *J* was engaged by the German Radio Company of Berlin from September 18, 1939, as an announcer of news in English and he actually did enemy propaganda on the radio On a charge of high treason,

Held, that in the circumstances, *J* owed allegiance to the Crown as an alien resident and under the protection of the Crown at least upto August 24, 1939, and the English Court had jurisdiction to try him As the passport was capable of affording *J* protection it is immaterial whether he availed himself of such protection or not.

BRISTOW *v*. WILLIAM DICKINSON & CO, LTD (1945) 2 All E R 678 (K.B.).

Income-tax—Bad debts recovered after being written off—Assessment.

Where the debts of an assessee were in the first place brought into computation as good and subsequently written off as bad, but in subsequent years the company recovered amounts towards such debt, such amounts must be included as trading receipts in the computation of profits in the year in which the money is received.

Absalom v *Talbot*, (1944) 1 All E R 642, relied.

MEHTA *v*. MEHTA, (1945) 2 All E R 690 (P D A).

Husband and wife—English woman marrying in India an Indian according to Arya Samaj rites after becoming a convert to Hinduism—If ceremony a " marriage " in the Christian sense in respect of which English Court can grant relief—Possibility of party changing faith which will permit of polygamy—Effect.

An English woman who came to India became converted to the Hindu faith and was purported to be married according to the rites of a Hindu sect known as the Arya Samaj to an England returned Indian sought the jurisdiction of the Court in England to have her marriage declared null and void on the ground that she was under the belief that she was being only converted and not going through any marriage by the ceremony. The opinion was given in evidence that as the husband could according to the law of his country alter his faith and having altered his faith then marry a second wife and so convert his monogamous marriage under the Arya Samaj creed into a polygamous marriage.

Held, the marriage being monogamous according to the Arya Samaj creed the Court can adjudicate upon the marriage, enforce rights under it and grant relief. The possibility of the husband's altering his faith and converting it into a polygamous marriage cannot affect the position.

On the evidence it was found that the wife never had any intention of marrying the respondent by the ceremony which was merely a fraud perpetrated on her by the respondent and a decree *nisi* of nullity was granted.

MORRIS *v.* MAYOR, ALDERMAN AND BURGESSES OF THE BOROUGH OF LUTON, (1946) 1 All. E R 1 (C.A).

Tort—Local authority erecting air raid shelter on highway—Duty to prevent its being dangerous to public—Injury to cyclist by collision with shelter during blackout—Contributory negligence—Principle how far applicable.

In an action by a cyclist for damages for personal injuries, resulting from a collision with an unlighted air raid shelter it was found that the local authority had painted vertical lines in white paint on each corner of the shelter and horizontal lines around the shelter The question of lighting was under consideration, owing to the difficulty of finding lamps which would burn for a long time without attention. The local authority put forward the plea of contributory negligence on the part of the plaintiff in not pulling up within the limits of his vision and avoiding the accident

Held, there is no such general proposition that a person riding in the dark must be able to pull up within the limits of his vision.

(*Baker* v. *Longhurst & Sons*, (1933) 2 K B. 461 explained and distinguished).

In dealing with traffic cases there is sometimes a temptation for judges to decide questions of fact in language which appears to lay down some rule which users of the road must observe But these are questions of fact dependent on the circumstances of each case

The local authority could have done something effective to light the shelter and not having done that were liable for the damages.

Fisher v. *Ruislip-Northwood Urban District Council*, (1945) 1 K. B. 584 : (1945) 2 All E R. 458, followed.

SCHERING LTD. *v.* STOCKHOLMS ENSKILDA BANK, (1946) 1 All.E.R. 36 (H L).

Contract—English Company guaranteeing debt due by German company to a Bank in Sweden, a neutral country—Outbreak of war—Effect on liability—Public policy—Principle of—Trading with the Enemy Act (1939)*—Scope.*

In 1936 a Swedish Bank was possessed of some German Reichmarks, the value of which at the current rate of exchange was £84,000, which a German company desired to acquire The German company had two subsidiary companies one in England and one in India. The German company acquired the Reichmarks and found it convenient owing to restrictions in Germany, to provide for the sterling payments to be made to the Swedish bank through its two subsidiaries with whom it could settle its indebtedness by means of the manufactured goods which it shipped to them The two subsidiary companies became sureties and pledged their goods for the claim of the Swedish bank against the German company which liability they undertook to purchase from the Swedish bank by instalments spread over a number of years and to reduce *pro tanto* their liability as guarantors When the war broke out in 1939 the fifth instalment became due and the guarantors took the view that payment would contravene the provisions of the Trading with the Enemy Act (1939) An action by the Bank was dismissed and that was confirmed on appeal. The guarantors then raised an action to have it declared that the contract was no longer enforceable against them and for the release to them of the amount of the debt.

Held, (Lord Russell of Killowen and Lord Macmillan dissenting) the effect of war upon a debt arising out of a contract made before the war is to suspend the right of action and not to abrogate or discharge the debt. The cause of action, the debt, is unaffected, the right of action is postponed until after the war. If this is true of a debt due to an enemy, it must *a fortiori* be so of one due to a neutral, though in matters relating to trading with the enemy there is no room for more tender treatment of the one than the other. There is this difference that by reason of the Trading with the Enemy Act 1939, had the debt been due to an enemy it

would have had to be paid to the custodian of enemy property, while in the case of a neutral the money will remain with the debtor to be paid by him to the neutral at the end of the war

The contract was executed and not executory and the outbreak of the war did not abrogate or discharged it.

Per *Lord Macmillan* —As benefit would accrue to the enemy during the war as a consequence of the further performance of the contract, the contract becomes illegal on grounds of public policy on the outbreak of war and is abrogated The contract cannot be regarded as having ceased to be executory before the outbreak of the war.

Decision of the Court of Appeal (1943) 2 All E.R. 486, affirmed.

R *v* SELLARS, (1946) 1 All.E R. 82 (C C.A)

Consumer Rationing (Consolidation) Order (1944) *Article* 4—*Acquisition of article in contravention of Order—Burden of proving that such acquisition is not prohibited by the Order is on the accused*

Article 4 of the Consumer Rationing (Consolidation) Order (1944) provided:—"A person, shall not acquire rationed goods from any person without surrendering the appropriate number of coupons in respect thereof; provided that it shall be a defence to a person charged with contravening this provision to prove that the supply to him of those goods without the surrender of coupons was not prohibited under the provisions of the Order"

A person who does acquire rationed goods, if charged with an offence against this Order, must, to be found not guilty, prove that the supply was not prohibited by this order The burden of proof is shifted intentionally by the Order on to the person accused, and it will be discharged by proving a set of facts which on examination is found not to be prohibited by any of the provisions of the Order.

R. *v* THOMAS PUTLAND AND GLADYS ANNIE SORREL, (1946) 1 All E.R. 85 (C.C A).

Consumer Rationing (Consolidation) Order, 1944—*Offence of acquiring rationed goods without coupons—Burden of proof*

In a charge of conspiracy to acquire and actual acquisition of rationed goods without surrendering the appropriate number of coupons in contravention of the Consumer Rationing (Consolidation) Order, 1944, on the question of burden of proof,

Held, the prosecution is not bound to prove by evidence that in fact there was no surrender of coupons, because in many cases that would be impossible. But the prosecution in making a charge against persons of having contravened the order, must give some *prima facie* evidence to the jury upon which the jury would be entitled as reasonable people to find as a fact that there was no surrender of coupons. When the prosecution have done that, there is not a change in the onus of proof, but there is a case against the defendants upon which the jury may convict them, unless they can upset the *prima facie* case which has been made against them. There is no necessity for a defendant in the first instance to give evidence that he has surrendered coupons—unless and until there is some case made against him, some *prima facie* case, so that an answer is called for Then it is for him; he can either sit down under it, or he can give evidence, make statements, do what he likes in the matter by way of satisfying the tribunal of fact that the transaction was in truth a proper one because there was a surrender of coupons.

1944 K.B. 68 : (1943) 2 All.E.R. 800, distinguished.